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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 DENNIS MONTGOMERY, an individual; and
18 MONTGOMERY FAMILY TRUST, a California
Trust,

19 Plaintiff,
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21 vs.
22

23 ETREPPID TECHNOLOGIES, L.L.C., a Nevada
24 Limited Liability Company; WARREN TREPP,
an individual; DEPARTMENT OF DEFENSE of
the UNITED STATES OF AMERICA, and
DOES 1 through 10,
25 Defendants
26
27 AND RELATED CASE(S)

28 Case No. 3:06-CV-00056-BES-VPC
Base File

3:06-cv-00145-PMP-VPC

**ETREPPID TECHNOLOGIES,
L.L.C.'S AND WARREN TREPP'S
REPLY IN SUPPORT OF MOTION
FOR CONTEMPT**

1 eTreppid Technologies, L.L.C. and Warren Trepp (hereinafter referred to as "eTreppid"),
 2 by and through their counsel Holland & Hart LLP, hereby submits their Reply in Support of
 3 Motion for Contempt [Docket # 1074]. This Reply is supported by the following Memorandum
 4 of Points and Authorities and all papers and pleadings filed herein.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. Introduction**

7 While Montgomery states, in his June 17, 2009 Opposition to the present Motion for
 8 Order to Show Cause, that he has substantially complied with this Court's May 26, 2009 Order,
 9 his Opposition actually serves to highlight significant areas in which he has utterly failed to
 10 comply with that Order. For instance, although Montgomery acknowledges that we withdrew
 11 approximately \$600,000.00 "in a series of cashier's checks," in early 2009, he has not provided a
 12 single document which indicates how these funds were spent. Thus, Montgomery is asserting
 13 that he disposed of approximately \$600,000.00 in cash without retaining any documents to
 14 indicate the manner in which he did so. This is simply not credible.

15 Montgomery's remaining responses demonstrate further deficiencies. Montgomery has
 16 apparently made no effort to obtain copies of promissory notes and he has not produced
 17 electronic copies of his Quicken and Bill Pay records. Furthermore, even though eTreppid
 18 served its requests for production on February 23, 2009, Montgomery apparently made no effort
 19 to obtain cancelled checks until after March 31, 2009, when (he affirms), his checking accounts
 20 were closed.

21 In short, Montgomery's Opposition to the present motion demonstrates that he has made,
 22 at best, a minimal effort either to respond to eTreppid's February 23, 2009 Requests for
 23 Production or to Comply with this Court's May 26, 2009 Order. Accordingly, significant
 24 contempt sanctions are appropriate.

25 **II. Argument**

26 **A. Montgomery Has Failed to Provide Copies of Cancelled Checks**

27 Montgomery asserts that he should not be obliged to provide copies of cancelled checks
 28 because, as his checking accounts have been closed, there is a fee of fifteen dollars per check for

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1 him to obtain these documents. However, the bank statements that Montgomery did produce
 2 show that he had bank accounts at Bank of America and Wells Fargo which were opened
 3 through March 2009. eTreppid's Requests for Production were propounded on February 23,
 4 2009. Thus, had Montgomery timely responded to these requests, he could have obtained these
 5 cancelled checks before the accounts were closed.

6 Moreover, even though Montgomery was ordered to produce all financial records, he has
 7 not provided any correspondence or other documents demonstrating that, as he claims, these
 8 bank accounts were closed by the respective financial institutions.

9 Montgomery is essentially asserting that, because his dilatory conduct has resulted in a
 10 greater expense associated with obtaining these documents, eTreppid should be obliged to pay to
 11 obtain them. This Court should not reward Montgomery's failure to make an effort to timely
 12 comply with eTreppid's document requests by relieving him of the burden of complying with
 13 these requests. Accordingly, Montgomery should be held in contempt for failing to produce
 14 these records.

15 B. Documents Relating to the Disposition of \$600,000.00 Deposited in Early 2009

16 Montgomery's records show that he deposited approximately \$600,000.00 in his bank in
 17 early 2009. He asserts that this entire amount was withdrawn in a series of cashiers checks.
 18 However, Montgomery has failed to produce any evidence showing how this money was spent.
 19 Montgomery apparently would have this Court believe that he disposed of \$600,000.00 in some
 20 unspecified way without retaining a single document to evidence any payments made.
 21 Montgomery's position is just not credible.

22 C. Electronic Financial Records

23 Montgomery purports to have complied with eTreppid's request for electronic financial
 24 records by providing printouts from the electronically stored records. This is simply not
 25 sufficient. Montgomery was obliged to produce these records in electronic format.

26 D. Documents Relating to Current Real Estate Mortgages and Auto Loans

27 Montgomery seems to assert that he does not need to obtain and produce documents
 28 relating to his real estate mortgages because "eTreppid has already placed liens on all three

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1 properties.” This is irrelevant. Montgomery was ordered to produce these documents. He
2 cannot avoid his obligation to obtain copies of the subject documents from his lender by merely
3 noting that eTreppid has liened the subject properties. Moreover, Montgomery has apparently
4 made no effort whatsoever to locate promissory notes or lease agreements for his automobiles.
5 Montgomery’s failure to make any effort to obtain these documents is clearly contemptuous.

6 E. Montgomery’s Failure to Obtain Paystubs

7 Montgomery asserts that he was not obliged to produce these records because “he does
8 not maintain check stubs.” At the time the underlying requests were served, Montgomery was an
9 employee of Blxware earning in excess of \$1.2 million per year. Montgomery could have
10 obtained these records on demand from Blxware. He was obligated, upon receipt of eTreppid’s
11 February 23, 2009 discovery requests, to do so. His failure to now produce these records clearly
12 constitutes contempt.

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III. Conclusion

Montgomery's Opposition demonstrates, over and over again, that he has not made any real effort to comply with this Court's May 26, 2009 Order. Accordingly, eTreppid submits that Montgomery should be held in contempt.

Dated: June 19, 2009.

/s/ Jerry M. Snyder

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on June 19, 2009.

/s/ Cynthia L. Kelb
Cynthia L. Kelb

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